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### My Rant On The Texas Civil Justice System

There have been 3-4 stories in the last month that have led to my rant. If you're not interested, you can skip the article and you won't hurt my feelings.

The right to civil jury trials is important. Not only is it included in the Bill of Rights, but one of the main grievances that led to the American Revolution was the unfair treatment of the colonies with respect to jury trials.

In England, judges were viewed as subjects to the King, which often resulted in biased and unfair results. But in England, citizens were protected from these judges and their political influences by the civil jury trial — a trial by common citizens.

In the colonies, however, King George III abolished the jury trial, leaving colonists subject to the decision of corrupt judges who served at the pleasure of the king.

Thomas Jefferson summed up the problem with this quote:

“[Judges] are liable to be tempted by bribery; that they are misled by favor, by relationship, by a spirit of party, by a devotion to the executive or legislative; that it is better to leave a cause to the decision of cross and pile (a game similar to a flip of the coin) than to that of a judge biased to

one side; and that the opinion of twelve honest jurymen gives still a better hope of right than cross and pile does.”

Unfortunately, at least in Texas, an argument can be made that history is repeating itself.

The Texas Supreme Court has recently come under fire in the popular press. On March 26, National Public Radio did a story that examined how the oil and gas industry is potentially underpaying royalty owners and how Texas Supreme Court decisions (including a case from our firm where the Court overturned a jury's decision) make it more difficult for royalty owners to prevail.

And making even more news was the Supreme Court's decision involving public access to Texas beaches. Ignoring well-settled Texas law, the Court recently handed down a decision that threatens the long-held concept that Texas beaches are public lands. The criticism has come from all sides. For example, the Court has been attacked by the liberal-leaning Burka blog and heard calls from Republican Land Commissioner Jerry Patterson

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## My Rant continued...

to vote out the five members of the Supreme Court who supported the decision. Patricia Hart, of the Houston Chronicle, wrote this:

“For generations to come, law school lectures on the topic of judicial activism will surely begin with the Texas Supreme Court’s recent opinion negating the state’s long-standing Open Beaches Act.

It’s hard to imagine a court ruling that exemplifies legislating from the bench more perfectly than the court’s recent assault on the long-standing tradition of public access to the Texas Coast.”

This criticism of the Texas Supreme Court is not new. One of the more popular posts on my blog is a 2007 post detailing a study from law professors finding that in the 2004-2005 terms, the Texas Supreme Court ruled for defendants 87% of the time. The study used Wal-Mart as an example of the alleged problem. From 1998-2005, there were 81 cases around the country (excluding Texas) at their states’ highest courts. In those cases, Wal-Mart won 56% of the time. During that same period, Wal-Mart had 12 cases at the Texas Supreme Court and won them all.

Unfortunately, at the same time that the Texas Supreme Court is being criticized for running amok, the traditional remedy — the jury trial — is disappearing.

A couple of weeks ago, the Dallas Morning News ran a story highlighting how civil jury trials are quickly disappearing in Texas. They stated:

“Civil jury trials are becoming rare in Texas. The right to have disputes decided by a panel of fellow citizens is cited in the Declaration of Independence and explicitly confirmed in the constitutions of Texas and the United States.

But new statistics show that the right to “trial by jury” is quietly and steadily disappearing. The 1,195 jury trials conducted in 2011 are one-third the number held in 1996, according to the Texas Administrative Office of Courts. During the same period, the number of lawsuits rose 25 percent.

In 1996, juries decided one out of every 48 lawsuits filed. Last year, only one in 183 new civil complaints resulted in jury verdicts.”

This is a problem that people will try to make worse before better. The legislature will convene again next year, and you can bet that the top of the agenda will contain a number of different items designed to limit trial by jury.

We need to stand up to this movement. I see how it hurts ordinary people every day. It will eventually hurt you too, but you won’t know it until it’s too late.

— Brooks Schuelke

## AUSTIN MAKES ANOTHER TOP 10 LIST (BUT NOT IN A GOOD WAY)

Those of us that live in Austin are used to our city being listed in a variety of “Top 10” lists. We recently made another list, but it wasn’t a good one.

Men’s Health Magazine used a complicated formula to try and determine the safest and most dangerous cities in the country for driving. Using their formula, Austin ranked as #10 in the “most dangerous cities” list, earning a grade of “F.” (Dallas was #2, and Houston was #4.)

Help protect yourself and your family from being victims. Drive defensively, and buy uninsured/underinsured motorist coverage.

If you’re ever unlucky enough to find yourself as a victim in a car wreck, please call us and let us help.



## May 19-25 Is Safe Boating Week

I've seen it in my neighborhood, and if you live near any of our lakes, you've probably seen it too. The last couple of weekends have brought out the boats. With Safe Boating Week approaching, I thought it was time for some safe boating tips.

Several years ago, I represented a lake patrol police officer, and he suggested to me that three simple things really reduce the risk of boating injuries.

The obvious start is to avoid drinking and boating. Not only is drinking and boating as dangerous as drinking and driving, it's worse. People need to remember that the effects of alcohol are magnified by the sun, by being on the water, and by the motion of the boat. One drink on the water has the same effect as multiple drinks on land.

The next suggestion is to make sure you know your lake. Unseen hazards are a big contributor to injuries. That's particularly true for Lake Travis, a fluctuating level lake, where hazards may be obvious one day and covered the next.

Finally, make sure you have enough life jackets for everyone on board. Proper use of life jackets could save you from drowning. And knowing how to swim isn't an excuse. People get in trouble when there is an impact and they're knocked unconscious or disoriented. Being a strong swimmer won't help you in those situations, but a life jacket will.

### PERSONAL WATERCRAFT SAFETY

You're not out of the woods if you only use a personal watercraft. In many areas, there are more injuries from personal watercraft accidents than from boating accidents. They're fast & highly maneuverable, and therefore, they're a lot of fun. But they're also dangerous. Here are some tips to help reduce the risk of injury:

1. Remember that kids under the age of 13 are not permitted to ride a personal watercraft without an adult, and kids aged 13-17 are not allowed to drive without a Texas Parks and Wildlife boater education certificate.



2. All riders must wear a properly certified life jacket.
3. Assume you are invisible. That means driving defensively and staying clear of other boaters.
4. Be cautious around other watercraft. A number of people are injured each year when their personal watercraft collide, often because they are goofing around. Don't let that happen to you.
5. You must drive at no-wake speed within 50 feet of shoreline. Not only is it the law, but it's also a source of continued injuries. A number of people are injured or killed each year because they are going too fast and lose control of their watercraft and hit the shoreline.
6. Avoid riding and drinking. As I stated earlier, the effects of alcohol are multiplied on the water.
7. Like boating, make sure you know the area.
8. Don't drive in the dark. Not only is it unsafe, but it's illegal in Texas.

And perhaps the most important item (and most difficult to remember) is **don't let go of the thrust when turning**. When confronted with an emergency, the natural instinct is to let off the accelerator and turn. But in most personal watercraft, when you let off the thrust, you lose the ability to turn.

We're blessed in Central Texas to have several good lakes for boating. Just make sure that you're being smart when enjoying these gifts.

This newsletter is informational and not legal advice. If you need legal advice, feel free to call us to set up a consultation.



As Always,  
Thanks For  
Your Referrals!

## HOW CINCO DE MAYO AFFECTS ALL OF US

Despite the common misconception, Cinco de Mayo does not celebrate Mexican Independence Day, but instead celebrates the Mexican army's victory over French forces at the Battle of Puebla on May 5, 1862. The battle happened after the French fleet staged a late 1861 landing in Veracruz and forced the Mexican president and its government into retreat.

Oddly, Cinco de Mayo is only a regional celebration in Mexico, but is an almost nation-wide celebration in the United States.

While that may sound strange at first glance, perhaps there's good reason for our entire country to celebrate — some historians believe that the Battle of Puebla had profound consequences on the U.S.

These historians argue that the real purpose of Napoleon III in ordering the French invasion into Mexico was to help break up the American Union, which was in the middle of the civil war. There were fears that the French would use Mexico as a base to help support the confederacy. Fortunately, the Mexican army defeated the French at the Battle of Puebla. The French were pre-occupied with a much more bitter battle than expected (until they were eventually driven out in 1867), and they couldn't aid the confederacy. As a result, the United States troops prevailed at Gettysburg, and the union stayed together.